

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE:

FILE NUMBER:

Buffalo
2003 - 02186(0)

REGULATORY PROJECT MANAGER:

Stone

Date: 4/6/04

PROJECT REVIEW/DETERMINATION COMPLETED:

In the office (Y/N)

Date:

At the project site Y (Y/N)

Date: 2/24/04

PROJECT LOCATION INFORMATION:

State:

County:

Center coordinates of site by latitude & longitudinal coordinates:

Approximate size of site/property (including uplands & in acres):

Name of waterway or watershed:

OHIO
Lorain
41-26-54 82-00-27
5
French Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands	✓								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?					✓
Is or would be used as habitat by other migratory birds that cross state lines?			✓		
Is or would be used as habitat for endangered species?				✓	
Is used to irrigate crops sold in interstate commerce?		✓			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION:

Preliminary Or Approved ✓

OPTIONAL ADDITIONAL INFORMATION SUPPORTING NJD (e.g., discussion may include information reviewed to assess potential navigation or interstate commerce connections - 1 to 3 paragraphs):

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COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE:
 FILE NUMBER:

BUFFALO ORWELL FIELD OFFICE
2004-00423 (0)

REGULATORY PROJECT MANAGER:

GONCLESKI

Date: 21 APR 04

PROJECT REVIEW/DETERMINATION COMPLETED:

In the office (Y/N)

Date:

At the project site X (Y/N)

Date: 6 APR 04

PROJECT LOCATION INFORMATION:

State:

County:

Center coordinates of site by latitude & longitudinal coordinates:

Approximate size of site/property (including uplands & in acres):

Name of waterway or watershed:

OHIO
LAKE
41.5863 81.4458
NOT APPLICABLE
EUCLID CREEK

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands	<u>X</u>								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			<u>X</u>		
Is or would be used as habitat by other migratory birds that cross state lines?			<u>X</u>		
Is or would be used as habitat for endangered species?					<u>X</u>
Is used to irrigate crops sold in interstate commerce?				<u>X</u>	

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION:

Preliminary Or Approved

OPTIONAL ADDITIONAL INFORMATION SUPPORTING NJD (e.g., discussion may include information reviewed to assess potential navigation or interstate commerce connections - 1 to 3 paragraphs):

- ① TOTAL APPROXIMATE SIZE UNKNOWN, ALL ISOLATED WETLANDS EXTEND OUTSIDE PROJECT STUDY AREAS. FOUR ISOLATED WETLANDS TOTAL
- ② FOUR WETLANDS ARE SURROUNDED BY UPLANDS AND ARE NOT ADJACENT ~~TO~~ TO WATERS OF THE UNITED STATES
- ③ 0.28 ACRES OF W.I.O.V.'S, EXIST WITHIN STUDY AREAS. ~~50~~ 15 RWAL

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING
FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY
CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2003-02167(1)

REGULATORY PROJECT MANAGER: Megan C. Oberst **Date:** April 16, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date:** 4/15/04

At the project site (Y/N) **Y** **Date:** 3/12/04

PROJECT LOCATION INFORMATION:

State: OH

County: Ashtabula

Center coordinates of site by latitude & longitude coordinates: 41.91443
80.73281

Approximate size of site/property (including uplands) in acres: 88.0

Name of waterway or watershed: Lake Erie

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands				x					
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			x		
Is or would be used as habitat by other migratory birds that cross state lines?			x		
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?		x			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring on site):

The approximately 88-acre site is located south of State Route 531 (Lake Road) and east of State Road, in the Town of Ashtabula, Ashtabula County, Ohio. Currently, the site houses two power plants that, at one time, were coal plants. At present, one of the plants produces calcium carbonate. Existing on the adjacent property to the east, is a berm and tailing pond into which wash water from the plant flows. The site is largely a railroad yard that was abandoned approximately 60 years ago. The soils contained on-site are disturbed, consisting of crushed stone and industrial debris. Based on the criteria for an atypical site, the soils in areas displaying wetland vegetation and wetland hydrology are assumed to be fill acting as hydric soil. The upland areas of the site are dominated by lawn and upland scrub/shrub vegetation; the wetland areas of the site exhibit emergent vegetation dominated by Common Reed (*Phragmites australis*). Both primary and secondary wetland hydrology indicators such as soil inundation, saturation within the upper 12 inches, and FAC-neutral test results, were observed at each wetland area. In the delineation submitted by the applicant, approximately 5.4 acres of wetland were identified on-site. The wetlands consist of stands of *Phragmites* growing in areas of abandoned railroad track. At some locations, the track is remaining, while at others, it has been removed. In addition to the wetland area, approximately 1,900 linear feet (0.218 acres) of *Phragmites* vegetated swales are present on the property. Because the swales do not have a defined bed or bank, they are considered linear wetlands. The water conducted by the central swale originates west at an off-site, existing tailing pond. The water is conducted through a culvert, then surfaces in the center of the site. The swale leads the water to an existing well along the eastern property line. From the well, the water enters a culvert and ditch network, then into a storm water system that eventually discharges into Lake Erie. As defined in the Federal Register, the artificially created tailing pond is not jurisdictional because it is maintained for the exclusive purpose of providing a settling basin. Therefore, because the drainage swale discharges directly into Lake Erie without connecting to a wetland or other water of the U.S., the Corps has no jurisdiction. The second swale is located in the southern quarter of the site. It begins on the eastern side of the railroad tracks and continues toward the collection well. However, this swale is segregated from wetland A by the elevated railroad bed and terminates before reaching the well. Therefore, it is, likewise, considered isolated due to a lack of connection or adjacency.

Based on an on-site investigation, the wetland boundaries mapped for A, B, C, and D appear to be accurate. The wetlands present on the site exist in small depressional areas of old fill and contain no surface water connections to a Water of the U.S. Based on a review of the delineation report and observations made during the site investigation, it has been determined that these wetlands are isolated, non-navigable, intrastate waters that are not subject to regulation under Section 404 of the Clean Water Act. No evidence of any interstate commerce connections were documented on-site. The proposed impact area is unknown.

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FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY
CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2003-02351(0)

REGULATORY PROJECT MANAGER: Scott L. Schlueter **Date:** April 26, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** 04/26/2004
At the project site (Y/N) Y **Date:** 11/12/2003

PROJECT LOCATION INFORMATION:

State: OH

County: Lake

Center coordinates of site by latitude & longitude coordinates: 41.76689
81.20989

Approximate size of site/property (including uplands) in acres 35

Name of waterway or watershed: McKinley Creek

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands		X							
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?				X	

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

The 35 acre parcel is located off of Bacon Road, Paineville Township, Lake County, Ohio. The site contains 6 wetlands totaling 0.96 acre, 3,865 feet of linear wetland (0.266 acre), and 1,180 linear feet of McKinley Creek.

To determine the extent of Federal jurisdiction, an on site investigation and an office resource evaluation were conducted. The office resource evaluation was based on the review of USGS topographical maps, Lake County Soil Survey, National Wetlands Inventory maps, and historical aerial photographs.

Wetlands B, C, D, E, and F (approx. 0.89 acre) are isolated, non-navigable, intrastate waters and have no surface water connection to McKinley Creek. In addition no other interstate commerce factors were documented. Wetlands B, C, D, E, and F are fully contained within the site boundaries. The applicant has indicated that all of the isolated wetlands will be impacted to some extent as a result of the proposed subdivision development.

Wetland A (0.07 acre) is Federally jurisdictional because it has a surface water connection to McKinley Creek and McKinley Creek flows into Lake Erie. Wetland A is fully contained within the site boundaries.

The 3,865 feet of linear wetland (approx. 0.266 acre) are Federally jurisdictional based on their surface water connection to McKinley Creek. McKinley Creek is Federally jurisdictional, it flows through the site and discharges directly into Lake Erie.

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CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-00601(0)

REGULATORY PROJECT MANAGER: Megan C. Oberst **Date:** April 26, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date:** 4/26/04

At the project site (Y/N) **Y** **Date:** 3/11/04

PROJECT LOCATION INFORMATION:

State: OH

County: Geauga

Center coordinates of site by latitude & longitude coordinates:

Approximate size of site/property (including uplands) in acres 15.0

Name of waterway or watershed: unnamed tributary

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	x								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			x		
Is or would be used as habitat by other migratory birds that cross state lines?			x		
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?				x	

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

The approximately 15-acre site is located east of State Route 44 and south of Ravenwood Drive, in the Town of Munson, Geauga County, Ohio. Contained on the property are five wetlands, one intermittent stream, five drainageways, and one pond. Two wetlands, D and E, are located in the center of the property. Wetland D receives water from a small drainage ditch that transfers water from the north and south into the center of the property. Wetland E is situated to the west of wetland D. This wetland lies in a depressional area that does not receive or convey water to or from another Water of the United States. Both wetlands contain hydrophytic vegetation and gleyed soils. The hydrology indicators include inundated soils and saturation within the upper 12 inches.

No outlets exist for wetlands D and E; therefore, both lack a surface water connection to another Water of the United States. No evidence of any interstate commerce connections were documented on-site. Based on various maps and an on-site investigation, it has been determined that these wetlands are isolated, non-navigable, intrastate waters that are not subject to regulation under Section 404 of the Clean Water Act. As proposed, both wetlands D and E will be removed in their entirety for the construction of the building.

The remaining waters on-site are all federally jurisdictional. The wetlands are connected via the intermittent stream and pond. Proposed impacts to wetlands A (0.33 acres) and B (0.15 acres), located along the western boundary of the property, will result from the construction of a drive off Ravenwood Drive. Impact to wetland C (0.02 acres) is to occur for the construction of the proposed building. In total, 0.08 acres of federal wetlands will be permanently impacted.

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CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-00440(0)

REGULATORY PROJECT MANAGER: Pauline D. Thorndike **Date:** April 28, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date: March 28, 2004**

At the project site (Y/N) **Y** **Date: March 8, 2004**

PROJECT LOCATION INFORMATION:

State: OH

County: Cuyahoga

Center coordinates of site by latitude & longitude coordinates: 41-19-50, 81-46-47

Approximate size of site/property (including uplands) in acres: 10 acres

Name of waterway or watershed: unnamed wetland

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	x								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			x		
Is or would be used as habitat by other migratory birds that cross state lines?			x		
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?		x			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine

NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

The Regulator was requested to determine if the wetlands on the property are jurisdictional. Based on a field determination and a review of in-office resources, the regulator determined there were 5 wetlands on the property totaling 0.101 acres in addition to a 0.17 acre man-made pond with a wetland fringe. Of these, 2 wetlands (0.07 acre) located on the southern end of the property were determined to be isolated and contained on-site. The Regulator determined that the two isolated wetlands are not connected via surface water to any other waters of the U.S., and that the wetlands are intra-state, isolated, and nonnavigable. The Regulator was not able to determine a nexus to interstate commerce. Based on the information provided to the Regulator, neither of the isolated wetlands will be filled during construction of the proposed project.

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FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY
CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 2004-00340(0)

REGULATORY PROJECT MANAGER: Megan C. Oberst **Date:** April 30, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date:** 4/29/04
At the project site (Y/N) **Y** **Date:** 3/11/04

PROJECT LOCATION INFORMATION:

State: OH

County: Portage

Center coordinates of site by latitude & longitude coordinates: 41.2419
81.3549

Approximate size of site/property (including uplands) in acres 35

Name of waterway or watershed: unnamed wetland

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands	x								
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹ Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			x		
Is or would be used as habitat by other migratory birds that cross state lines?			x		
Is or would be used as habitat for endangered species?				x	
Is used to irrigate crops sold in interstate commerce?		x			

¹ Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine

NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

The approximately 35-acre site is located north of Olga Avenue, south of State Route 14, and west of Route 303, in the Town of Streetsboro, Portage County, Ohio. The forested property contains 8.920 acres of wetland and 2194.89 linear feet of stream and ditch. Most of the wetlands on the property are found within the low lying valley area in a southeast to northwest flowing swale. These wetlands are predominantly cattail marshes surrounded by dense scrub/shrub vegetation.

Wetland B is located in the center-west portion of the property. Although the small wetland is relatively close to wetland A, it is perched above the other water. An elevational difference of five feet separates the two wetlands. In addition, no surface water connection is found leading from wetland B to wetland A or to another Water of the United States. Further, no evidence of any interstate commerce connections have been documented on-site. Therefore, based on various maps and an on-site investigation, it has been determined that wetland B is an isolated, non-navigable, intrastate water that is not subject to regulation under Section 404 of the Clean Water Act.

The remaining wetlands, approximately 8.85 acres, form a contiguous network that is connected to Tinkers Creek via tributaries. The property is proposed to contain a housing development consisting of duplexes. The development will be accessed from Route 14 and Olga Avenue. Two roads will extend from this main road. The construction of the site will result in the filling of 0.389 acres of Federal wetlands and 133.48 linear feet of stream (0.012 acres). No impacts are to occur to the isolated wetland on-site.